



4310-MR-W

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[BOEM-2011-0082]

Right-of-Way Grant of Submerged Lands on the Outer Continental Shelf to Support Renewable Energy Development

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Request for Comment.

SUMMARY: BOEM Form 0009 would be used to issue Outer Continental Shelf (OCS) renewable energy right-of-way (ROW) grants in order to streamline this process and increase efficiency and consistency for applicants. As defined by BOEM regulations at 30 CFR Part 585, an ROW grant is an authorization issued for use of a portion of the OCS for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other energy product generated or produced from renewable energy, but does not constitute a project easement. The ability of an ROW grantee to install such a cable or pipeline and operate such activities would be subject to the applicable approvals specified in 30 CFR Part 585. BOEM has developed the form included in this notice and invites comments on the draft form. Following the 30-day comment period, BOEM will review all submitted comments, and publish a final version of the form in the *Federal Register*.

DATE: Submit written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Maureen A. Bornholdt, Program Manager, Office of Renewable Energy Programs at (703) 787-1300.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter docket BOEM-2011-0082 then click “search.” Follow the instructions to submit public comments and view supporting and related materials. All comments will be posted on www.regulations.gov.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Jennifer Golladay;
381 Elden Street, HM 1328; Herndon, Virginia 20170. Please reference the docket number and title in your comment and include your name and return address.

PUBLIC COMMENT PROCEDURES: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you may ask us in your comment to withhold particular information from public view, we cannot guarantee that we will be able to do so. Information that is not labeled as privileged or confidential will be regarded as suitable for public release.

AUTHORITY: 43 U.S.C. 1331 et seq.

August 20, 2012_____
Date

Tommy P. Beaudreau
Director, Bureau of Ocean Energy Management

<p style="text-align: center;">UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF OCEAN ENERGY MANAGEMENT</p> <p style="text-align: center;">RIGHT-OF-WAY GRANT OF SUBMERGED LANDS ON THE OUTER CONTINENTAL SHELF TO SUPPORT RENEWABLE ENERGY DEVELOPMENT</p> <p><i>Paperwork Reduction Act of 1995 statement: This form does not constitute an information collection as defined by 44 U.S.C. § 3501 et seq, and therefore does not require approval by the Office of Management and Budget.</i></p>	Office	Renewable Energy Grant Number
	Cash Bonus	Official Protraction Diagram(s)
	Effective Date	

This right-of-way (ROW) grant, which includes any addenda hereto, is hereby entered into by and between the United States of America, ("Grantor"), acting through the Bureau of Ocean Energy Management ("BOEM"), its authorized officer, and

Grantee	Interest Held

("Grantee"). This grant is effective on the date written above ("Effective Date") and will continue in effect until the grant terminates as set forth in Addendum "B." In consideration of any cash payment heretofore made by the Grantee to the Grantor and in consideration of the promises, terms, conditions, covenants, and stipulations contained herein and attached hereto, the Grantee and Grantor agree as follows:

Section 1: Statutes and Regulations.

This grant is issued pursuant to subsection 8(p) of the Outer Continental Shelf Lands Act ("the Act"); 43 U.S.C. §§ 1331 *et seq.* This grant is subject to the Act and regulations promulgated pursuant to the Act, including but not limited to, offshore renewable energy and alternate use regulations at 30 C.F.R. Part 585 as well as other applicable statutes and regulations in existence on the Effective Date of this grant. This grant is also subject to those statutes enacted (including amendments to the Act and other statutes) and regulations promulgated thereafter, except to the extent that they explicitly conflict with an express provision of this grant. It is expressly understood that amendments to existing statutes and regulations, including but not limited to the Act, may be made, and/or new statutes may be enacted or new regulations promulgated, which do not explicitly conflict with an express provision of this grant, and that the Grantee bears the risk that such may increase or decrease the Grantee's obligations under the grant.

Section 2: Rights of the Grantee.

- (a) The Grantor hereby grants to the Grantee the exclusive right and privilege, subject to the terms and conditions of this grant and applicable regulations, to

conduct activities in the area identified in Addendum A of this grant ("granted area") that are described in a General Activities Plan (GAP) that has been approved by the Grantor. This grant does not, by itself, authorize any activity within the granted area.

- (b) The rights granted to the Grantee herein are limited to those activities described in a GAP approved by the Grantor. The rights granted to the Grantee are limited by the grant-specific terms, conditions, and stipulations required by the Grantor per Addendum C.
- (c) This grant does not authorize the Grantee to conduct activities on the Outer Continental Shelf (OCS) relating to or associated with the exploration for, or development or production of, oil, gas, or other seabed minerals.

Section 3: Reservations to the Grantor.

- (a) All rights in the granted area not expressly granted to the Grantee by the Act, applicable regulations, this grant, or any approved GAP are hereby reserved to the Grantor.
- (b) The Grantor retains the right to require revisions to an approved GAP, pursuant to 30 C.F.R. § 585.655.
- (c) The Grantor reserves the right to suspend the Grantee's operations in accordance with the national security and defense provisions of section 12 of the Act and applicable regulations.
- (d) The Grantor reserves the right to authorize other uses within the granted area that will not unreasonably interfere with activities described in Addendum "A."

Section 4: Payments.

The Grantee must make all rent payments in accordance with applicable regulations in 30 C.F.R Part 585, unless otherwise specified in Addendum "B."

Section 5: Plans.

The Grantee may conduct those activities described in Addendum "A" only in accordance with a GAP approved by the Grantor. The Grantee may not deviate from an approved GAP except as provided in applicable regulations in 30 CFR Part 585.

Section 6: Conduct of Activities.

The Grantee must conduct all activities in the granted area in accordance with an approved GAP, and with all applicable laws regulations.

The Grantee further agrees that no activities authorized by this grant will be carried out in a manner that:

- (a) could unreasonably interfere with or endanger activities or operations carried out under any lease or grant issued or maintained pursuant to the Act, or under any other license or approval from any Federal agency;
- (b) could cause any undue harm or damage to the environment;
- (c) could create hazardous or unsafe conditions; or
- (d) could adversely affect sites, structures, or objects of historical, cultural, or archaeological significance, without notice to and direction from the Grantor on how to proceed.

Section 7: Violations, Suspensions, Cancellations, and Remedies

If the Grantee fails to comply with (1) any of the provisions of the Act or regulations, (2) the approved GAP, or (3) the terms of this grant, including associated Addenda, the Grantor may exercise any of the remedies that are provided under the Act and applicable regulations, including, without limitation, issuance of cessation of operations orders, suspension or cancellation of the grant, and/or the imposition of penalties, in accordance with the Act and applicable regulations. The Grantor may also cancel this grant for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), or for other reasons provided by the Grantor pursuant to 30 C.F.R. § 585.437.

Non-enforcement by the Grantor of a remedy for any particular violation of the applicable provisions of the Act or regulations, or the terms of this grant, shall not prevent the Grantor from exercising any remedy, including cancellation of this grant, for any other violation or for the same violation occurring at any other time.

Section 8: Indemnification.

The Grantee hereby agrees to indemnify the Grantor for, and hold the Grantor harmless from, any claim caused by or resulting from any of the Grantee's operations or activities on the granted area or arising out of any activities conducted by or on behalf of the Grantee or its employees, contractors (including Operator, if applicable), subcontractors, or their employees, under this grant, including claims for:

- a. loss or damage to natural resources,
- b. the release of any petroleum or any Hazardous Materials,
- c. other environmental injury of any kind,
- d. damage to property,
- e. injury to persons, and/or
- f. costs or expenses incurred by the Grantor.

The Grantee shall not be liable for any losses or damages proximately caused by the activities of the Grantor or the Grantor's employees, contractors, subcontractors, or their

employees. The Grantee shall pay the Grantor for damages, costs, or expenses due pursuant to this section within ninety (90) days after written demand by the Grantor. Nothing in this grant shall be construed to waive any liability or relieve the Grantee from any penalties, sanctions, or claims that would otherwise apply by statute, regulation, operation of law, or could be imposed by the Grantor or other government agency acting under such laws.

“Hazardous Material” means

1. Any substance or material defined as hazardous, a pollutant, or a contaminant under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. §§ 9601(14) and (33);
2. Any regulated substance as defined by the Resource Conservation and Recovery Act (“RCRA”) at 42 U.S.C. § 6991 (7), whether or not contained in or released from underground storage tanks, and any hazardous waste regulated under RCRA pursuant to 42 U.S.C. §§ 6921, *et seq*;
3. Oil, as defined by the Clean Water Act at 33 U.S.C. § 1321(a)(1) and the Oil Pollution Act at 33 U.S.C. § 2701(23); or
4. Other substances that applicable Federal, state, tribal, or local laws define and regulate as “hazardous.”

Section 9: Financial Assurance.

The Grantee must provide and maintain at all times a surety bond(s) or other form(s) of financial assurance approved by the Grantor in the amount specified in Addendum “B.” As provided by the applicable regulations in 30 C.F.R. Part 585, if, at any time during the term of this grant, the Grantor requires additional financial assurance, then the Grantee shall furnish the additional financial assurance required by the Grantor in a form acceptable to the Grantor within ninety (90) days after receipt of Grantor’s notice of such adjustment.

Section 10: Assignment or Transfer of Grant.

This grant may not be assigned or transferred in whole or in part without written approval of the Grantor. The Grantor reserves the right, in its sole discretion, to deny approval of the Grantee’s application to transfer or assign all or part of this grant. Any assignment will be effective on the date the Grantor approves the Grantee’s application. Any assignment made in contravention of this section is void.

Section 11: Relinquishment of Grant.

The Grantee may relinquish this entire grant or any officially designated subdivision thereof by filing with the appropriate office of the Grantor a written relinquishment application, in accordance with applicable regulations in 30 C.F.R. Part 585. No relinquishment of this grant or any portion thereof will relieve the Grantee or its surety of the obligations accrued hereunder, including but not limited to, the responsibility to remove property and restore the granted area pursuant to section 12 of this grant and applicable regulations.

Section 12: Removal of Property and Restoration of the Granted Area on Termination of Grant.

Unless otherwise authorized by the Grantor, pursuant to the applicable regulations in 30 C.F.R. Part 585, the Grantee must remove or decommission all facilities, projects, cables, pipelines, and obstructions and clear the seafloor of all obstructions created by the Grantee's activities on the granted area within 2 years following grant termination, whether by expiration, cancellation, contraction, or relinquishment, in accordance with any GAP and applicable regulations in 30 C.F.R. Part 585.

Section 13: Safety Requirements.

The Grantee must:

- a. maintain all places of employment for activities authorized under this grant in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Grantee or of any contractor or subcontractor operating under this grant;
- b. maintain all operations within the granted area in compliance with regulations in 30 C.F.R. Part 585 and orders from the Grantor and other Federal agencies with jurisdiction, intended to protect persons, property, and the environment on the OCS; and
- c. provide any requested documents and records, which are pertinent to occupational or public health, safety, or environmental protection, and allow prompt access, at the site of any operation or activity conducted under this grant, to any inspector authorized by the Grantor or other Federal agency with jurisdiction.

Section 14: Debarment Compliance.

The Grantee must comply with the Department of the Interior's non-procurement debarment and suspension regulations as set forth in 2 C.F.R. Parts 180 and 1400 and must communicate the requirement to comply with these regulations to persons with whom it does business related to this grant by including this requirement in all relevant contracts and transactions.

Section 15: Notices.

All notices or reports provided from one party to the other under the terms of this grant must be in writing, except as provided herein and in the applicable regulations in 30 C.F.R. Part 585. Written notices must be delivered to the parties' Grant Representative, as specifically listed in Addendum "A," either electronically, by hand, by facsimile, or by United States first class mail, adequate postage prepaid. Either party may notify the other of a change of address by doing so in writing. Until notice of any change of address is delivered as provided in this section, the last recorded address of either party will be deemed the address for all notices required under this grant. For all operational matters, notices must

be provided to the parties' Operations Representative, as specifically listed in Addendum "A," as well as the Grant Representative.

Section 16: Severability Clause.

If any provision of this grant is held unenforceable, all remaining provisions of this grant will remain in full force and effect.

Section 17: Substantial Deviation.

Pursuant to the applicable regulations in 30 C.F.R. Part 585, Grantor may cancel this grant if Grantor determines that any cable or pipeline constructed in the granted area substantially deviates from the Grantee's approved GAP.

Section 18: Modification.

Unless otherwise authorized by the applicable regulations in 30 C.F.R. Part 585, this grant may be modified or amended only by mutual agreement of the Grantor and the Grantee. No such modification or amendment shall be binding unless it is in writing and signed by the Grant Representatives of both the Grantor and the Grantee.

_____	_____
Grantee	The United States of America Grantor
_____	_____
(Signature of Authorized Officer)	(Signature of Authorized Officer)
_____	_____
(Name of Signatory)	(Name of Signatory)
_____	_____
(Title)	(Title)
_____	_____
(Date)	(Date)

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "A"

DESCRIPTION OF GRANTED AREA AND GRANT ACTIVITIES

Grant Number _____

I. Grantor and Grantee Contact Information

Grantee Company Number: _____

(a) Grantor's Contact Information

	Grant Representative	Operations Representative
Name		
Title		
Address		
Phone		
Fax		
Email		

(b) Grantee's Contact Information

	Grant Representative	Operations Representative
Name		
Title		
Address		
Phone		
Fax		
Email		

II. Description of Granted Area

III. Description of the Project

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "B"

GRANT TERM AND FINANCIAL SCHEDULE

Grant Number _____

I. Grant Term

II. Definitions

III. Payments

(a) **Rent.** The Grantee must pay rent as described below:

- Grant statute miles: _____
- Additional acres in grant project area: _____
- Annual Rental Rate: \$_____ per statute mile or fraction thereof
- Annual Rental Rate: \$_____ per acre or fraction thereof
- Rental fee for entire grant project area (using rounded up mileage and acreage):
\$_____

(b) Reporting, Validation, Audits, and Late Payments

IV. Financial Assurance

The Grantor will determine the amount of financial assurance requirements in accordance with applicable regulations at 30 C.F.R. Part 585. The amount of the financial assurance must be no less than the amount required to meet all grant obligations, including:

- The projected amount of payments due the Grantor over the next 12 months;
- Any past due payments;
- Other monetary obligations; and
- The estimated cost of decommissioning.

- (a) Initial Financial Assurance Due Before Grant Issuance Date.
- (b) Additional Financial Assurance.
- (c) Adjustments to Financial Assurance Amounts.

The Grantor reserves the right to adjust the amount of any financial assurance requirement associated with this grant and/or reassess Grantee's cumulative grant obligations, including decommissioning obligations, pursuant to the applicable regulations in 30 C.F.R. Part 585.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "C"¹

GRANT-SPECIFIC TERMS, CONDITIONS, AND STIPULATIONS

Grant Number _____

The Grantee's rights to conduct activities on the grant area are subject to the following terms, conditions, and stipulations:

The mitigation, monitoring, and reporting requirements listed in this Addendum C are adopted as terms and conditions of the grant. Monitoring results and required reports must be submitted to the Grantor as specified below:

**Bureau of Ocean Energy Management
Office of Renewable Energy Programs
381 Elden Street, HM1328
Herndon, Virginia 20170
Phone: 703-787-1300
Fax: 703-787-1708**

The Grantor may change this address upon notice to the Grantee in accordance with Section 15 of this grant.

[FR Doc. 2012-21275 Filed 08/28/2012 at 8:45 am; Publication Date: 08/29/2012]

¹ Note: Stipulations are developed on a case-by-case basis relating to location, technology utilized, and other relevant factors, including site-specific findings from project-specific environmental analyses.